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February 3, 1993

VIA HAND DELIVERY

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: MM Docket No. 92-266
Rate Regulation

Dear Ms. Searcy:

Time Warner Entertainment Company, L.P. ("Time Warner") hereby supplements comments filed on January 27, 1993 in the above-referenced docket. Despite its membership in the Motion Picture Association of America ("MPAA"), Time Warner wishes to disagree with Section II of the comments filed by MPAA in the above-referenced docket. MPAA's comments state that the Commission "must require operators to provide billing and collection services, must establish cost-based rates for such services, and must ensure that 'any charges for billing and collection services . . . be unbundled from other charges for leased commercial access.'"[1] Time Warner's full position on leased access is set out in its separate comments filed in the above-referenced docket. However, Time Warner disagrees with the MPAA position on the required billing and collection issue for two principal reasons.

First, the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), does not require, or authorize the Commission

[1]Comments of Motion Picture Association of America in MM Docket No. 92-266, filed Jan. 27, 1993, at 5 ("MPAA Comments").

to require, cable operators to provide billing and collection for leased access programmers. Section 9 of the 1992 Cable Act merely authorizes the Commission to establish maximum leased access rates.[2] MPAA simply observes that "the statute nowhere suggests that a cable operator is free not to offer billing and collection."[3] Such a reading of the statute contravenes both its plain meaning and established rules of statutory construction. The obvious way to read the statute, and indeed the way the Commission has interpreted it,[4] is that the Commission must establish rates for leased access billing and collection services, which apply only when a cable operator chooses to provide such services. Likewise, the legislative history cited by MPAA does not require cable operators to provide leased access billing and collection services; it only requires the Commission to establish rates for such services where a cable operator elects to offer them. Furthermore, even if the House Bill cited by MPAA[5] could be read as requiring the Commission to adopt standards governing leased access billing and collection, this language was not adopted in the final version of the 1992 Cable Act, which strongly suggests that Congress rejected the idea.

Additionally, as the Congress undoubtedly recognized, requiring cable operators to provide leased access billing and collection services is bad policy. Currently, there is little demand nationwide for leased access, and thus an inadequate record on which to base any billing and collection requirements.[6] At this nascent stage of leased access programming, we believe that it would be wrong for the Commission to set stifling requirements. Moreover, many cable operators contract out their own billing to third parties, and collections often involve third parties as well. It makes no sense to require cable operators to provide services, at regulated rates, for the benefit of leased channel programmers which cable operators do not even provide for

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[2]47 U.S.C. § 532(c) (1984), as amended by 1992 Cable Act Sec. 9.

[3]MPAA Comments at 7.

[4]Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC 92-544 (released December 24, 1992), at ¶ 146.

[5]MPAA Comments at 7.

[6]MPAA's contention that the leased access provisions of the 1984 Cable Act have "failed" is simply wrong and contrary to actual experience. See Time Warner comments in MM Docket 92-266 at n. 231.

themselves, particularly given the availability of third party vendors willing and able to provide such services.

Finally, as Time Warner explained in its comments in the above-referenced docket, some Time Warner cable systems carry over 35 leased access programmers.[7] Each programming service has unique marketing, billing, and collection requirements and plans. For example, a pay-per-view programmer has very different needs than an advertiser-supported programmer. A programmer seeking a broad, general audience has very different requirements than a "niche" programmer targeting narrow audiences. The Commission should allow these programmers to maintain maximum flexibility in this area, allowing specialized leased access programmer needs to be addressed through individually negotiated arrangements for billing and collection. Such flexibility would be totally consistent with Commission action in its recent video dialtone rulemaking, where the Commission has permitted, not required, local exchange telephone carriers who provide video dialtone service to provide billing and collection services to their customers.[8] The Commission recognized that its proposed new service "should be permitted to develop according to the dictates of the marketplace and technology and that our regulatory policies should not constrain that development."[9] We believe the same policy considerations demand that cable operators not be required to provide billing and collection services to their leased access customers.

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[7]Comments of Time Warner Entertainment Company, L.P. in MM Docket No. 92-266, filed January 27, 1993, at 101.

[8]Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking in CC Docket No. 87-266, 7 FCC Rcd 5781 at ¶ 2 ("local telephone companies will be permitted to provide some additional enhanced and non-common carrier services to customers of the common carrier platform. For example, local telephone companies could provide video gateways, certain video processing services and capabilities, and other non-common carrier services such as billing and collection") (footnotes omitted) (emphasis added).

[9]Id. at ¶ 60 (footnote omitted).

Time Warner respectfully requests that the foregoing be made part of the Commission's record in MM Docket No. 92-266.

Very truly yours,

Arthur H. Harding

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cc: Fritz Attaway, Esq.